DAMAGES — MITIGATION OF DAMAGES — BENEFITS RECEIVED FROM THIRD PERSON. — A landlord broke his covenant to renew a lease on a certain date. The land was taken by eminent domain, but the tenant was allowed by the city which took it to remain for some time thereafter. He was finally evicted and sued for the breach of covenant. *Held*, that in computing the damages the period during which the plaintiff had occupied as tenant of the city should not be excluded. *Neiderstein* v. *Cusick*, 126 N. Y. App. Div. 409.

It is a general rule that the fact that the plaintiff has been compensated by a third person, wholly independently of the defendant, is not admissible in mitigation of damages. It has been held, however, in actions to recover for loss of time and medical expenses, that if the plaintiff's wages were not stopped and he was cared for in a free hospital, the damages should be proportionately reduced. *Drinkwater* v. *Dinsmore*, 80 N. Y. 390; *Duke* v. *Mo. Pac. Ry.*, 99 Mo. 347. But the weight of authority is against these decisions. *Pennsylvania Co.* v. *Marion*, 104 Ind. 239; *Nashville, etc., Ry.* v. *Miller*, 120 Ga. 453. And in an action by a lessor for the lessee's breach of a covenant to repair, evidence that the next tenant put the premises in good condition is not admissible in mitigation of damages. *Appleton* v. *Marx*, 191 N. Y. 81. The rule seems to be opposed to the principle that damages are imposed only to indemnify the plaintiff for the actual loss he has suffered, not to punish the defendant for the wrong he has done. It can be justified only on grounds of expediency.

EASEMENTS — IMPLIED GRANT AND RESERVATION — LIGHT AND AIR. — A owned two adjacent lots, one vacant, the other occupied by a building. He conveyed the latter to B, and later conveyed the former to C. *Held*, that on the conveyance to B there arose by implied grant an easement of light and air over the vacant lot. *Fowler* v. *Wick*, 70 Atl. 682 (N. J., Ct. Ch.).

Whether a grant of an easement of light and air will be implied is a controverted question in this country. The principal case follows the well-settled English rule that such implication will be made from the grant of a house having windows overlooking land retained by the grantor. *Palmer* v. *Fletcher*, 1 Lev. 122. See *Allen* v. *Taylor*, 16 Ch. D. 355. In some states in this country the doctrine has been entirely repudiated, no such easement being allowed unless by express grant. *Keats* v. *Hugo*, 115 Mass. 204. Other states make the implication only on the strictest necessity. *Robinson* v. *Clapp*, 65 Conn. 365. Still others apply a less rigorous rule of necessity. See *Turner* v. *Thompson*, 58 Ga. 268. With the exception of Maryland, New Jersey seems to be the only jurisdiction where the English rule is fully recognized. *Janes* v. *Jenkins*, 34 Md. 1.

ESTOPPEL — ESTOPPEL BY DEED — EFFECT OF JUDGMENT LIEN. — A debtor against whom there existed a valid judgment lien gave a warranty deed of land which he expected to inherit. The land subsequently descended to him. *Held*, that the grantee in the conveyance takes the property subject to the judgment lien. *Bliss* v. *Brown*, 96 Pac. 945 (Kan.). See NOTES, p. 136.

EXECUTORS AND ADMINISTRATORS — RIGHTS, POWERS, AND DUTIES — RIGHT OF SET-OFF AGAINST LEGATEES OR HEIRS. — The defendant was a beneficiary under the will of A and the residuary legatee under that of B. A debt due from B to A was barred by the Statute of Limitations. The trustees of A's estate took out a summons to determine the question of the defendant's liability to the estate. *Held*, that the defendant must bring into account the amount of the debt, as against his share of the testator's estate. *In re Bruce*, 98 L. T. R. 834 (Eng., Ch. D., April 2, 1908).

It is settled in England that if a beneficiary is indebted to the estate, but the debt is barred by the Statute, the executor can retain the amount of the debt, on the theory that the beneficiary already holds part of the assets to which he is entitled. *In re Akerman*, [1891] 3 Ch. 212. This doctrine is questionable, but the principal case goes much further; for here the beneficiary owed nothing to the estate. He had never received any of the assets to which he was entitled, and therefore the application of the rule breaks down. A prior English case expressly recognizes this necessity for a debt; for it was held that a loan from the

testator to a legatee, a married woman, which she was morally though not legally bound to repay, could not be set off against her legacy. *In re Wheeler*, [1904] 2 Ch. 66. The present decision can be supported, if at all, only on the ground that it would be unconscionable for the beneficiary to take his share of the estate without accounting for the debt.

EXTRADITION — INTERNATIONAL EXTRADITION — RETROACTIVE TREATY. The defendant, having committed bribery in Ohio in 1906, fled to Ontario. The Ohio authorities demanded his return under the treaty between Great Britain and the United States. This treaty was not ratified until 1907, but it provided that there might be extradition for bribery committed since 1889. *Held*, that the defendant may be extradited. *Re Cannon*, 12 Ont. W. Rep. 171.

A fugitive from the justice of one country is not guaranteed an asylum in any other country. *Ker* v. *Illinois*, 119 U. S. 436. Extradition, therefore, is a mere form of procedure which deprives him of no substantial right. Accordingly it is not a form of punishment within the meaning of the United States constitutional provision against *ex post facto* laws. *Duncan* v. *Missouri*, 152 U. S. 377. And in the United States it seems settled that an extradition treaty operates retroactively unless it contains a provision expressly declaring that it shall not apply to crimes committed prior to its conclusion. *In re De Giacomo*, 12 Blatchf. (U. S.) 391. *A fortiori* the defendant is liable to be extradited where the parties to the treaty, as in the one under consideration, clearly intended it to have a retroactive effect.

GOOD WILL — BASIS OF VALUATION ON DISSOLUTION OF PARTNERSHIP. — A retiring partner demanded an accounting for his share in the firm assets, including the good will, from the surviving partner who had taken over the entire assets of the firm and continued the business under the old name. *Held*, that the defendant must account for salable value of the good will at the time of dissolution on the basis that either partner has a right to carry on a new business of the same kind and to solicit trade from customers of the old firm. *Moore* v. *Rawson*, 85 N. E. 586 (Mass.).

When a partnership business has been sold under bankruptcy proceedings, the law of both England and this country allows either partner to set up a new business of the same kind and to solicit trade from the customers of the old firm, and the value of the good will is estimated accordingly. *Walker* v. *Mottram*, 19 Ch. D. 355; *Hutchinson* v. *Nay*, 187 Mass. 262. When, however, there is a voluntary sale by one partner of his interest in the business, the English law, though it allows the seller to set up a new business of the same kind, prohibits him from soliciting the patronage of the customers of the old firm and the courts assess the good will on this basis. *Trego* v. *Hunt*, [1896] A. C. 7. In the case of a sale of the good will on dissolution of a partnership the English courts apply the rule in voluntary sales. *In re David and Matthews*, [1897] 1 Ch. 378. But in the principal case the rule in sales under bankruptcy proceedings was applied. It is submitted that the sale was essentially voluntary, and that therefore the English view should have been followed.

HABEAS CORPUS — PARENT'S RIGHT TO WRIT DISCHARGING INFANT SON FROM ARMY. — A parent sued out a writ of *habeas corpus* to secure the discharge of his infant son from the army under R. S. U. S. § 1117, which provided that "no person under the age of twenty-one years shall be enlisted or mustered into the service of the United States without the written consent of his parents or guardian." After the writ had issued the infant was arrested and charges were instituted against him for fraudulent enlistment. *Held*, that the writ should be dismissed. *Ex parte Lewkowitz*, 163 Fed. 646 (Circ. Ct., S. D. N. Y.).

The enlistment of an infant over sixteen years of age is binding upon the infant himself, but voidable at the option of the parent or guardian. *In re Morrissey*, 137 U. S. 157. If the infant has been sentenced by court martial, he will not be released on the petition of his parent or guardian. *In re Dowd*, 90 Fed. 718. Nor will he be released if a court martial has obtained jurisdiction